

NOT INCLUDED IN  
BOUND VOLUMES

PMH  
Los Angeles, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

CON-WAY FREIGHT INC.  
Employer

and

Case 31–RC–136543

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 63  
Petitioner

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

The National Labor Relations Board, by a three-member panel, has considered an objection to an election held October 23, 2014, and the hearing officer's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 16 for and 17 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings<sup>1</sup> and recommendations,<sup>2</sup> and finds that a certification of results of election should be issued.

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<sup>1</sup> The Petitioner has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> In adopting the hearing officer's recommendation to overrule the Petitioner's election objection, we rely solely on the Petitioner's failure to establish that the Employer announced or granted a raise in pay to bargaining unit employees during the critical period. In making this determination, we rely on our own review of the record

## CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for International Brotherhood of Teamsters, Local 63, and that it is not the exclusive representative of these bargaining unit employees.

Dated, Washington, D.C., May 27, 2015.

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Mark Gaston Pearce, Chairman

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Philip A. Miscimarra, Member

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Kent Y. Hirozawa, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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and the hearing officer's credibility findings. Accordingly, we find it unnecessary to rely on the portions of the hearing officer's report analyzing whether the alleged objectionable conduct would have warranted setting aside the election had its occurrence been proved, including but not limited to the hearing officer's discussion of *B&D Plastics*, 302 NLRB 245 (1991), and his statement that the alleged objectionable conduct was "remote in time" from the election.

Member Miscimarra joins his colleagues in overruling the Petitioner's election objection and notes that the Petitioner's sole witness, union organizer Shaun Martinez, testified that unnamed employees told him that the Employer's president promised them a wage increase, and that the promise was made during the critical period between the filing of the election petition and the election. However, Martinez refused to identify the employees to whom the promise purportedly was made, and the Petitioner did not offer any other evidence in support of its objection. On this record, Member Miscimarra agrees that the Petitioner failed to satisfy its burden to prove that objectionable conduct occurred. Cf. *Sonoco Protective Solutions*, 04-RC-128714. 2014 WL 7149608, slip op. at 1 (Dec. 15, 2014) (Member Miscimarra, concurring) (overruling without a hearing the employer's election objections where the employer refused to provide the names of the employees to whom alleged threatening statements were made by union supporters or the names of the union supporters who allegedly made the threats).